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## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Mental Health, Mental Retardation, and Substance Abuse Services
<b>Virginia Administrative Code (VAC) citation</b>	<u>12_ VAC 35- 105-10</u> et.seq.
<b>Regulation title</b>	Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services
<b>Action title</b>	Amend the Regulations
<b>Document preparation date</b>	06/27/2003

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The proposed regulations amend the existing Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services. The purpose of these regulations is to license providers of day support, crisis stabilization, and in-home support services funded through the Individual and Family Developmental Disabilities Support Waiver (IFDDS). Licensing of these services is necessary for them to be eligible for Medicaid IFDDS Waiver funding. These amendments primarily add terminology applicable to these newly covered services and few additional requirements specific to these services.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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The State Board of Mental Health, Mental Retardation, and Substance Abuse Services approved the amended Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services for final promulgation on June 27, 2003.

### Legal basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

*If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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The 2002 Virginia General Assembly amended § 37.1.179 et. seq. of the Code of Virginia authorizing the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) to license day support, crisis stabilization, and in-home support services funded through the IFDDS Waiver. The amendment to § 51.5-14.1 of the Code of Virginia further required the promulgation of emergency regulations within 280 days of its enactment, which was July 1, 2002. Emergency regulations were promulgated on September 19, 2002.

The Office of the Attorney General has certified that the Board of Mental Health, Mental Retardation and Substance Abuse Services has the authority to promulgate these regulations under Va. Code § 37.1-10 and these regulations comport with state and/or federal law.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of this action is to promulgate provisions to license day support, crisis stabilization, and in-home support services funded through the Individual and Family Developmental Disabilities Support Waiver (IFDDS) by amending the Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services to cover providers of these services. Amendments were needed to incorporate definitions and references

appropriate to the individuals and services covered by the IFDDS waiver. Licensing of these services is necessary for individuals being served under the IFDDS Waiver to receive Medicaid funding for such services. Prior to the General Assembly designating licensing authority to the DMHMRSAS, providers and families could not access these funds because no agency had authority to license IFDDS services. IFDDS services allow individuals with developmental disabilities to be served in community settings.

Emergency regulations for licensing IFDDS services were promulgated on September 19, 2002 and will expire on September 18, 2003. These regulations will replace the emergency regulations and are proposed to be effective prior to the expiration, date so that DMHMRSAS will maintain its authority to license IFDDS services.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The action is proposed to amend the existing licensing regulations as follows:

1. Modify several definitions in to reflect the services provided under the IFDDS waiver and add definitions of terms relevant to the services.
2. Incorporate reference to the IFDDS services in 12 VAC 35-105-30.
3. Require services be accessible to individuals with physical and sensory disabilities in 12 VAC 35-105-280(A).
4. Require supervision be provided by a Qualified Developmental Disabilities Professional (QDDP) in 12 VAC 35-105-590 (C)(2)) and that assessment and individual service plans (ISPs) be approved by a QDDP.
5. Require the ISP to be consistent with the Consumer Service Plan 12 VAC 35-105-660(I).

### Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The advantages of these regulations are that they minimally amend existing licensing regulations for similar services to include provisions for licensing IFDDS services. The amendments will allow eligible individuals to access IFDDS Waiver funding for needed services since only licensed providers may provide these services. It allows providers already licensed by DMHMRSAS to modify existing licenses and begin providing these

services. It allows new providers to become licensed and be able to serve this population.

- 2) The advantages to the Commonwealth is that by minimally amending existing regulations, implementation of these regulations for these services is expedited and licensing can occur at a lower cost to the state.
- 3) There is no disadvantage to the public or Commonwealth.

### Changes made since the proposed stage

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

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Section number	Requirement at proposed stage	What has changed	Rationale for change
20	“Behavioral or positive behavioral support treatment program”	The term has been changed to “behavioral treatment or positive behavioral support program”	Preferred terminology.
	“ Consumer service plan (CSP) means a comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual with a developmental disability or other related conditions. This plan is developed by the support coordinator for an individual served through the IFDDS Waiver.”	The definition has been revised as follows: “Consumer service plan” or “CSP” means that document addressing all needs of recipients of home and community-based care developmental disability services, in all life areas. Supporting documentation developed by service providers is to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipients’ ages, levels of functioning, and preferences.”	This revision is consistent with the recommendations of the Department of Medical Assistance Services (DMAS) and addresses the Inspector General’s concerns regarding ensuring consumer involvement in the treatment process.
	“Developmental disabilities and related conditions” means autism or a severe, chronic disability. . .”	The term has been changed to from “developmental disabilities and related conditions” to “related conditions.” (The definition has not changed.)	Consistent with federal Medicaid terminology.
	“Instrumental activities of daily living (ADL)” means. . .	“Instrumental activities of daily living (IADL)” means. . .	Editorial correction.
	“Qualified Development Disabilities Professional” (QDDP) means an individual possessing at least one year of documented experience working directly with individuals who have developmental disabilities or related conditions and is one of the following: a doctor...”	“ Qualified Developmental Disabilities Professional (QDDP) means an individual possessing at least one year of documented experience working directly with individuals with developmental disabilities or related conditions and is one of the following: a doctor...”	Consistent with federal Medicaid terminology.
30.A	“. . . or persons with developmental disabilities or related conditions served . . .	“developmental disabilities or related conditions served . . .”	Consistent with federal Medicaid terminology.
30.B	Residential crisis stabilization services were included on the list of services that may be licensed. The list did not include non-residential crisis stabilization.	Non-residential crisis stabilization was added to the list.  “5. Crisis stabilization (residential and non-residential);”	Lists both types of crisis stabilization services.
280.A	“. . . and be accessible to individuals with physical and sensory disabilities.”	“. . . and be accessible to individuals with physical and sensory disabilities.”	Editorial change.
590.C.2	“Supervision of IFDDS Waiver services shall be performed by a QDDP or an employee or contractor with experience equivalent to the educational requirement.”	“Supervision of IFDDS Waiver services shall be performed by a QDDP or an employee or contractor with equivalent experience.”	Editorial change made to make the language consistent with another similar section of the regulations.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Department of Medical Assistance Services	DMAS made a number of comments pertaining to consistency of these regulations with DMAS regulations, editorial changes and staff qualifications.	Most of the DMAS recommendations were adopted. DMAS was in concurrence with changes made.
Inspector General for DMHMRSAS	Requested that regulations ensure consumer involvement at key junctures in the treatment process.	<p>The definition for “consumer service plan” (which was recommended by DMAS) was modified to include the individual’s preferences as a factor to be considered in developing the plan.</p> <p>These regulations also require all licensed providers to comply with the human rights regulations (12 VAC 35-115) pertaining to participation in decision-making and consent by individuals receiving services in all aspects of treatment. The Licensing Regulations also require involvement of individuals in the development of the service plan and sign-off on the service plan</p>

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
20 “Definitions”		“Consumer services plan”	Definition of “consumer services plan” added because consumer service plans are required for services funded by the IFDDS waiver. Definition changed after public comment period to be more consistent with the definition used by DMAS.
		“Crisis stabilization”	Definition of “crisis stabilization” added to describe the scope of services that will be licensed under these regulations.
		“Day support services”	The existing definition revised to include individuals with “related conditions” as a group that will be provided day support services.

		“Related conditions”	The definition of “related conditions” was added to describe the new population that may receive services from providers that are licensed under these regulations.
		“IFDDS Waiver”	Definition of “IFDDS Waiver” added to describe the services to be licensed.
		“Instrumental activities of daily living”	The definition of “instrumental activities of daily living” was added. This term relates specifically to training that is provided to individuals receiving services under the IFDDS Waiver.
		“Neglect”	The existing definition was revised to state that the definition of neglect applies to individuals served under IFDDS Waiver.
		“Provider”	The existing definition revised to include providers of IFDDS Waiver services.
		“Qualified Developmental Disabilities Professional (QDDP)”	The definition of “qualified developmental disabilities” was added to describe an individual with the credentials necessary to provide/supervise IFDDS Waiver services under these regulations.
		“Service”	The existing definition revised to add IFDDS Waiver services.
30		“Licenses”	The existing provision was revised to include IFDDS Waiver services as a service that is licensed under the regulations.
280 (A)		“Physical Environment”	The existing provision was revised to require the physical environment for a service to be accessible to individuals with physical and sensory disabilities.
590 (C2 and 4)		“Provider Staffing Plan”	Provisions were inserted for IFDDS waiver services that are comparable to other licensed services, including requirements for obtaining approval of ISPs and requiring assessments to be carried out by QDDPs or individuals with equivalent experience.
	660 (I)	“Individualized service plan (ISP)”	New provision inserted that requires ISPs for individuals served by the IFDDS waiver to be consistent with the Consumer Service Plan

## Impact on family

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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This amendment will allow eligible families of individuals with related conditions to access services they have not been able to access before, because there was no entity designated as the licensing authority for providers of services funded through the IFFDS Waiver. Access to services should promote family stability and allow families to better care for their child or family member within the home. It will promote self-sufficiency for families by increasing skills and supports for individuals with developmental disabilities.